

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In re:

CLARE HOUSE BUNGALOW
HOMES, LLC,

Debtor.

NO: CV-11-158-RMP

Bankruptcy No: 09-4651-PCW11

Adversary No: 09-80164-PCW11

CLARE HOUSE BUNGALOW
HOMES RESIDENTS ASSOCIATION,

Plaintiff,

vs.

CLARE HOUSE BUNGALOW
HOMES, L.L.C., a Washington limited
liability company; JOHN H. CAUDILL
and LUCILLE J. CAUDILL, as Trustees
for the CAUDILL LIVING TRUST
dated November 1, 2000; WANELL J.
BARTON, as Trustee for the WANELL
J. BARTON FAMILY TRUST dated
May 7, 1998 and any amendments;
DIRK A. CAUDILL and LAUREN C.
CAUDILL, as Trustees of the CAUDILL
FAMILY TRUST dated September 11,
2002; EARL L. BOETTCHER and

ORDER DENYING
RESPONDENTS' MOTION TO
DISMISS APPEAL AS MOOT

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MOOT ~ 1

1 MARY C. BOETTCHER, as Trustees
for the BOETTCHER FAMILY TRUST
2 dated May 12, 1992; KERMIT B.
WILLIAMS and BELVA M.
3 WILLIAMS, husband and wife; LARRY
LOUTHERBACK and SHANNA
4 LOUTHERBACK, as Trustees of the
LOUTHERBACK FAMILY TRUST
5 dated February 9, 2001; DALE
WALKER and CAROL WALKER,
6 husband and wife; and JOHN P.
GLEESING, an individual; PETER J.
7 NOE; LLOYD ROSS and BONNIE
GUTHRIE-ROSS; KEVIN
8 BLANCHAT; BLACKSTONE
CORPORATION; and IBEX
9 FLOORING, LLC; also all other persons
or parties unknown claiming any right,
10 title, estate, lien, or interest in the real
estate described in the complaint herein,

11
12 Defendants.

13 This matter comes before the Court on the Respondents' Motion to Dismiss
14 Appeal as Moot, ECF No. 14. The Court has reviewed the motion, the relevant
15 filings, the pleadings, and the file and is fully informed.

16 ***Facts and Procedural History***

17 This action concerns the relative interests of persons claiming rights to land
18 previously owned by Clare House Bungalow Homes, LLC ("Clare House"), debtor
19 in the underlying bankruptcy action.

1 Clare House is best described as an assisted living facility. Clare House
2 owned and managed 28 bungalows built upon the property at issue. Residents
3 much be 55 years of age or older to occupy a bungalow. Each bungalow resident
4 entered into a “Resident Agreement” with Clare House, whereby the resident
5 agreed to pay a lump sum to occupy the bungalow and use the common areas of
6 the property until the resident’s death or a point when they become physically
7 unable to care for themselves. At that time, Clare House would market the
8 bungalow to other persons and some percentage of the lump sum paid by the prior
9 resident, typically 80%, is returned to the resident’s estate. ECF No. 5-33, at 1-2.

10 Helene M. Raun and Chester E. Raun signed a Resident Agreement with
11 Clare House on August 2, 2000. ECF No. 8-25. Per the terms of the Agreement,
12 the Rauns paid a \$132,500 occupancy fee for the bungalow. ECF No. 8-25, at 3.
13 By an addendum agreement dated March 20, 2002, Clare House and the Rauns
14 agreed that, upon termination of the agreement, the Rauns would be entitled to the
15 greater amount of 85% of the occupancy fee they paid for the bungalow or 85% of
16 the occupancy fee paid by their immediate successor in the bungalow. ECF No. 8-
17 25, at 14. The Rauns recorded their Resident Agreement on December 20, 2001.
18 ECF No. 5-18, at 8. Helene M. Raun and the Estate of Chester E. Raun (“the
19 Rauns”) are Appellants in this action.

1 Clare House became burdened by numerous deeds of trust over the years. A
2 group of investors known as the Caudill Investors secured the first deed of trust on
3 the land (“the Caudill Deed of Trust”). The Caudill Investors consist of (1) the
4 Caudill Living Trust; (2) Jim and Wanell Barton; (3) the Caudill Family Trust; (4)
5 the Boettcher Family Trust; (5) Kermit and Belva Williams; (6) the Loutherback
6 Living Trust; and (7) Dale and Carol Walker. The Caudill Investors executed and
7 recorded the Caudill Deed of Trust on November 24, 2004, re-recorded it on
8 December 22, 2004, and modified it on April 8, 2005, with recording of the same
9 on April 11, 2005. ECF No. 5-33, at 2. The Caudill Investors are Respondents in
10 this action. The other deeds of trust are junior to the Caudill Deed of Trust and are
11 not germane to the present controversy.

12 Some residents of Clare House, including the Rauns, entered into and
13 recorded their Resident Agreements before the Caudill Investors secured and
14 recorded the Caudill Deed of Trust. ECF No. 5-18, at 8. A second group of
15 residents entered into Resident Agreements before the Caudill Deed of Trust was
16 recorded, but did not record their agreements. A third group of residents entered
17 into Resident Agreements after the Caudill Deed of Trust was recorded and did not
18 record their agreements. ECF No. 33, at 6.

19 With the land so encumbered, twenty-four residents of Clare House
20 bungalows formed the Clare House Bungalow Homes Residents Association (“the

1 Association”) to utilize common representation of their interests in litigation. ECF
2 No. 4-3, at 2. The Rauns were members of the Association. ECF No. 31, at 2.

3 On February 3, 2009, the Association filed an action in Spokane County
4 Superior Court to quiet title in the property previously held by Clare House. The
5 Association named as defendants Clare House, the Caudill Investors, John P.
6 Gleesing, Trustee for the Caudill Deed of Trust, and the other holders of deeds of
7 trust on the Clare House property and their respective trustees. ECF No. 4-3. The
8 Association sought a ruling that its residents held superior title to the land and that
9 the defendants and their successors in interest were bound by the terms of the
10 Resident Agreements. The Association further sought to restrain a planned
11 foreclosure on the Caudill Deed of Trust. ECF No. 4-3, at 9.

12 On the same day that the Association filed suit in superior court, it also filed
13 a lis pendens and recorded it in the Office of the Recorder for Spokane County.
14 ECF No. 22-1. On August 4, 2009, the Association further entered into a
15 stipulation with counsel for the Caudill Investors and Trustee John P. Gleesing.
16 ECF No. 22-2. The stipulation provided that the Association would not seek to
17 restrain a trustee’s sale scheduled for August 21, 2009. In return, the Caudill
18 Investors agreed that the Association reserved all of its claims and defenses, and
19 that the Caudill Investors would not assert that the sale of the property at the
20 trustee’s sale operated as a defense to the Association’s claims. ECF No. 22-2. By

1 its terms, the stipulation appears to apply until the trustee's sale scheduled for
2 August 21, 2009, occurred, or until any continued date set by the Trustee." ECF
3 No. 22-2, at 4.

4 On August 20, 2009, Clare House filed for Chapter 11 bankruptcy. In
5 conjunction with the bankruptcy proceeding, the Association's quiet title
6 proceeding was removed from superior court to the jurisdiction of the bankruptcy
7 court. ECF No. 5-18, at 1-2.

8 The bankruptcy court adjudicated the rights of the parties by memorandum
9 decisions dated December 14, 2010, and March 11, 2011, and by entry of an Order
10 and Judgment dated March 8, 2011. ECF Nos. 5-18; 5-33; 16-1.

11 In its first memorandum decision, the bankruptcy court entered summary
12 judgment regarding the rights of the first group of residents, who entered into and
13 recorded their Resident Agreements before the Caudill Deed of Trust was
14 recorded. ECF No. 5-18. The Rauns were included in this first group of residents.
15 ECF No. 5-18, at 2. The bankruptcy court determined that the property rights of
16 these residents were superior to the rights of the Caudill investors and the holders
17 of all other deeds of trust obtained thereafter. ECF No. 5-18, at 8-9. The
18 bankruptcy court further determined that the property rights enjoyed by the first
19 group of residents included the right to occupancy and possession of the property.
20 ECF No. 5-18, at 4-5. However, the court concluded that the obligation to

1 reimburse a percentage of the occupancy fee was not a property right, but rather a
2 contractual obligation between each resident and Clare House. ECF No. 5-18, at 5.

3 The bankruptcy court issued its second memorandum decision following
4 trial held on January 24 and 25, 2011. In that memorandum, the bankruptcy court
5 determined that the property rights of the other two groups of residents also were
6 superior to the rights of the holders of the deeds of trust, because the lienholders
7 were charged with inquiry notice of the residents' interests in the property. ECF
8 No. 5-33, at 8-9. The bankruptcy court issued a judgment stating that every
9 resident's right to occupancy and possession was superior to the interests of all
10 defendants, but that every resident's right to reimbursement of a portion of the
11 occupancy fee was a personal contract right between the resident and Clare House.
12 ECF No. 16-1, at 4-5.

13 The Association sought review of the bankruptcy court's decisions in this
14 Court. The Association contended that any successors in interest to Clare House
15 should be bound to the obligation to reimburse a percentage of the occupancy fees,
16 in addition to the property rights identified by the bankruptcy court. ECF No. 7.
17 The Caudill Investors were the only defendants to respond to the Association's
18 appeal. The Caudill Investors urged this Court to uphold the bankruptcy court's
19 rulings in all respects. ECF No. 10.

1 On September 30, 2011, after the Association's appeal to this Court, the
2 Caudill Investors conducted a trustee's sale of the Clare House property. The
3 Caudill Investors were the successful bidder at the sale. ECF No. 16-2. Following
4 the trustee's sale, the Caudill Investors filed the instant Motion to Dismiss Appeal
5 as Moot, ECF No. 14.

6 After the briefing was completed on the motion to dismiss, the Association
7 filed a Motion to Re-Designate Real Parties in Interest, ECF No. 24. The
8 Association explained that all of the parties to the action had reached a settlement,
9 with the exception of the Rauns. Thus the Association requested that the Rauns be
10 substituted as the party of interest. ECF No. 25. The Court granted this request by
11 Order dated March 29, 2012. ECF No. 34.

12 *Discussion*

13 Article III of the United States Constitution limits the jurisdiction of federal
14 courts to "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. The mootness
15 doctrine stems from this constitutional provision and requires that a live
16 controversy exist at all stages of federal court proceedings. *Pitts v. Terrible*
17 *Herbst, Inc.*, 653 F.3d 1081, 1086 (9th Cir. 2011). When an event occurs that
18 prevents the court from granting relief, the claim is moot and must be dismissed.
19 *Am. Rivers v. Nat'l Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

1 The Caudill Investors argue that the foreclosure sale operates to moot the
2 quiet title action. The Caudill Investors contend that the foreclosure sale
3 extinguished all subordinate interests in the land, including the Rauns' interests.
4 The Rauns respond that their interests in the land were protected by 1) the lis
5 pendens that the Association filed and recorded in connection with its original
6 superior court action, and 2) the stipulation entered into by the Association and the
7 Caudill Investors.

8 The Court finds that the lis pendens does not apply to a party that takes title
9 to a deed of trust entered into and recorded before the underlying action. However,
10 the Court further finds that the stipulation prohibits the Caudill Investors from now
11 arguing that the appeal is moot. In addition, the Court notes that the Rauns'
12 interests were senior to the Caudill Deed of Trust and would not be extinguished
13 by the trustee's sale in any event.

14 *A. The Lis Pendens*

15 The Association filed and recorded a lis pendens at the inception of their
16 case in Spokane Superior Court. ECF No. 22-1. Under Washington law, a lis
17 pendens functions as constructive notice of the pending suit to any purchaser or
18 encumbrancer of the property. RCW 4.28.320. As such, the interest obtained by
19 any subsequent purchaser or encumbrancer will be subject to any judgment issued
20 in the pending suit. *Id.* A lis pendens has no effect on the substantive rights of the

1 parties, but merely forces any person subsequently obtaining an interest in the land
2 to join the action or be bound by the judgment. *Merrick v. Pattison*, 85 Wn. 240,
3 245 (1915).

4 The Caudill Investors took title to the Clare House property pursuant to a
5 trustee's sale. Under Washington law, a trustee's deed gives the purchaser at sale
6 the interest the grantor had when he executed the deed of trust. RCW 61.24.050.
7 The grantor, Clare House, executed the Caudill Deed of Trust well before the
8 Association commenced its action and filed the lis pendens. A lis pendens has no
9 effect on property rights already existing at the time the lis pendens is filed. *E.g.*,
10 *Ligon v. City of Detroit*, 739 N.W.2d 900, 905-06 (Mich. Ct. App. 2007).

11 Because the Caudill Investors took title pursuant to the Caudill Deed of
12 Trust, and the Caudill Deed of Trust was executed and recorded before the lis
13 pendens was entered, the Caudill Investors' purchase at the trustee's sale was not
14 subject to the lis pendens. Neither the Rauns nor the Association sought to restrain
15 the trustee's sale or attack the validity of the deed of trust;¹ thus, any purchaser
16 taking title at a trustee's sale was not put on notice that the sale itself could
17 potentially be invalidated. *Cf. Miller Grading Contractors, Inc. v. Georgia Fed.*
18 *Sav. & Loan Ass'n*, 279 S.E.2d 442, 444 (Ga. 1981) (holding that a lis pendens did

19 _____
20 ¹ While the Association's original complaint in Spokane County Superior Court
did seek to restrain the trustee's sale, ECF No. 4-3, the Association subsequently
entered into a stipulation agreeing not to restrain the sale. ECF No. 22-2.

1 not “chill the bidding” at foreclosure sale because the pending action did not
2 challenge foreclosure sale itself or the security deed).

3 *B. The Stipulation*

4 On August 4, 2009, while the quiet title action was pending in Spokane
5 Superior Court, counsel for the Association entered into a stipulation with counsel
6 for the Caudill Investors and John P. Gleesing, Trustee for the Caudill Deed of
7 Trust. ECF No. 22-1. Pursuant to the stipulation, the Association agreed “not to
8 seek to restrain the Trustee’s Sale scheduled for August 21, 2009.” ECF No. 22-2,
9 at 2. In return, the Caudill Investors and the Trustee agreed that the Association
10 reserved all its claims and defenses, and that the Caudill Investors “will not claim
11 that the fact the Trustee’s Sale has been held and a deed issued operates as a
12 defense to the Association’s claims” ECF No. 22-2, at 2. The stipulation
13 further provided:

14 In the event that the Trustee’s Sale set for August 21, 2009 is not
15 successfully completed on the date set or any continued date set by the
16 Trustee, then this Stipulation shall be held for naught and not filed
17 with the Court. This Stipulation shall only be filed with the Court after
18 the successful completion of the Trustee’s Sale on the date set or any
19 continued date set by the Trustee.

20 ECF No. 22-2, at 3.

The Caudill Investors note that the stipulation was not filed with the superior
court or the bankruptcy court. But according to the terms of the stipulation, the
parties were not to file the stipulation with the court until *after* the trustee’s sale.

1 The trustee's sale did not occur until September 30, 2011, after the case was
2 removed to bankruptcy court and after the bankruptcy court issued its judgment in
3 the matter. If the Association had filed the stipulation before that time, they would
4 have been violating the terms of the agreement.

5 The Caudill Investors further contend that the stipulation was meant only to
6 apply to the trial phase of the litigation, and once final judgment was entered in the
7 bankruptcy court, the parties' respective obligations under the stipulation were
8 extinguished. But the stipulation itself contains no such limitation. In the absence
9 of language to the contrary, the Court assumes that the parties intended for the
10 stipulation to apply during all phases of review of the matter.

11 Typically, the stipulation probably would not bind a third party who
12 purchased the land at a trustee's sale, because that third party likely would not be
13 in privity with the party who had entered into the stipulation. But in this case, the
14 same party who entered into the stipulation, the Caudill Investors, was the
15 purchaser at the trustee's sale. Therefore, the Court finds that the Caudill Investors
16 are bound by the stipulation and may not now claim that the Rauns' appeal is
17 mooted by operation of the trustee's sale.

18 *C. Order of Interests*

19 Under Washington law, a trustee's deed gives the purchaser at the trustee's
20 sale the interest the grantor had when he executed the deed of trust. RCW

1 61.24.050. All junior liens and interests on the property are extinguished. *Glidden*
2 *v. Mun. Auth. of Tacoma*, 111 Wn. 2d 341, 347 n.3 (1988). However, all superior
3 liens and interests remain attached to the property. *Mann v. Household Fin. Corp.*
4 *III*, 109 Wn. App. 387, 392-93 (2001).

5 The Rauns are the only appellants left in this action. ECF No. 36. The
6 Rauns entered into and recorded their Resident Agreement before the grantor,
7 Clare House, executed the Caudill Deed of Trust. ECF No. 5-18, at 8. The Rauns'
8 interests were superior to the interest Clare House had when it executed the Caudill
9 Deed of Trust and remain on the land despite the trustee's sale. Therefore, the
10 Court concludes that the Rauns' case has not been mooted by the foreclosure sale
11 in any event.

12 Accordingly, **IT IS HEREBY ORDERED** that the Caudill Investors'
13 Motion to Dismiss, **ECF No. 14**, is **DENIED**.

14 The District Court Executive is hereby directed to enter this Order and to
15 provide copies to counsel.

16 **DATED** this 27th day of September, 2012.

17
18 s/ Rosanna Malouf Peterson
19 ROSANNA MALOUF PETERSON
20 Chief United States District Court Judge